IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1606 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GENERAL SECRETARY

Versus

CHIEF MANAGER

Appearance:

1. Special Civil Application No. 1606 of 1993

MR HD CHUDASAMA for Petitioner No. 1-2

MR PS CHARI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/07/2004

ORAL JUDGEMENT

1.0. The petitioner by way of this petition has challenged the judgment and award of the Industrial Tribunal dated 23rd December, 1991 in Reference No. CGIT-2/53 of 1985, whereby the Tribunal dismissed the

Reference and confirmed the order of dismissal passed by the respondent-Bank.

2.0. The short facts of the case are that the petitioner joined the service of respondent-Bank on 1st April, 1976 as part-time sweeper. The service of the petitioner was terminated vide order dated 19th November, 1982, on the ground of certain misconduct alleged against him. Being aggrieved by the order of termination, the petitioner approached the Industrial Tribunal by filing Reference No. CGIT-2/53 of 1985. The Tribunal dismissed the Reference and confirmed the order of dismissal. Being aggrieved by the order of Tribunal, the petitioner has preferred this petition.

3.0. The matter was listed before this Court on various dates, namely, on 1st July, 2004, 9th July, 2004 23rd July, 2004 and on 23rd July, 2004, the following order came to be passed :-

"When the matter was on board on 9th July, 2004, Mr. Chudasama was informed that if on the next date of hearing, he is not present, then the matter will proceed on merits today. Today, he is not present. As a last chance, S.O. to 27th July, 2004 in first board."

3.1. Since on 27th July, 2004, hearing of part heard matters were going on, the matter was kept on 29th July, 2004 i.e. today. Even today, Mr. Chudasama has not remained present even in the third round.

4.0. I have gone through the record of this petition and especially the judgment and award of the Industrial Tribunal wherein, the Industrial Tribunal has in sub-para 11 has recorded the cross-examination of the petitioner, which reads as under :-

"In his cross-examination the workman Shri Parmar submitted that :-

I had gone to Ajmer after 24-1-1981 and stayed there for two days. I had taken the pay-in slips of the Bank there. In one pay-in-slip the amount of Rs.354=00 and the other pay-in-slip the amount of Rs.270=00 were entered into. In the pay-in-slip for Rs.354=00 the name of Makhanjibhai R. Desai appeared and in the other pay-in-slip, the name of L.V.Vihol appeared. I had taken the above two amounts from Ahmedabad to

Ajmer. Those amounts belong to the Bank account holders mentioned above."

The abovesaid amounts were handed to the workman on 24-1-1981. Therefore, as per the admission of the workman himself, he misappropriated those amounts on 24-1-1981, and did not credit them in the Account of the Gujarat Housing Board. Those amounts were admittedly belonging to the two account holders of the Bank. Therefore, by the said act the workman clearly committed gross misconduct by doing an act prejudicial to the interests of the Bank and as such he was rightly found guilty of the charge no.1 levelled against him by the Enquiry Officer."

4.1. The Tribunal has further relied upon the decisions of this Court as well as the Apex Court and has upheld the order of dismissal passed by the respondent-Bank. The Tribunal has also considered the misconduct of the petitioner namely, misbehaving with the daughter of the Bank's customer earlier.

4.2. Looking to the peculiar facts and circumstances of the case, and especially the judgment and award of the Industrial Tribunal, it is not a fit case where any indulgence is required to be shown. I am in complete agreement with the findings and conclusion reached by the Industrial Tribunal and, therefore, no interference is called for in the present petition.

5.0. In the result, the petition is dismissed. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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